

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:23-CV-00381-M-KS

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARQUICE VERNELL GOLDSTON,

Defendant.

ORDER

This matter comes before the court for review of the Memorandum and Recommendation (the “Recommendation”) filed on September 19, 2023, by Magistrate Judge Kimberly A. Swank, in accordance with 28 U.S.C. § 636(b) [DE 6]. In the Recommendation, Judge Swank recommends that the court deny Goldston’s application to proceed in forma pauperis and dismiss Goldston’s Complaint,¹ both without prejudice, for Goldston’s failure to prosecute. DE 6 at 2. The basis for the Recommendation is Goldston’s noncompliance with a prior order from Judge Swank. *See* DE 5 (ordering Goldston to correct certain defects in his pleading, including to sign Complaint, complete application to proceed in forma pauperis, and establish a basis for court’s subject matter jurisdiction).² The Recommendation, which includes instructions and a deadline for objections, was served on Goldston on September 19, 2023. DE 6 at 2-3. Goldston did not file objections to the Recommendation.

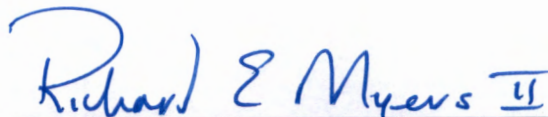
¹ Goldston’s case caption lists him as the Defendant, even though he instituted the action against the United States. Accordingly, the case caption above mirrors what Goldston submitted, notwithstanding that he is the Plaintiff.

² That prior order specifically cautioned Goldston that his failure to correct the deficiencies identified by Judge Swank “may result in the dismissal of this action without prejudice for failure to prosecute.” *Id.* at 2.

The court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” 28 U.S.C. § 636(b), but need only “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made,” *id.* Notwithstanding that Goldston raised no objections to the Recommendation, the court has reviewed the Complaint and the Recommendation and made a de novo determination which is in accord with the Recommendation. The court therefore adopts the Recommendation in full.

The Recommendation [DE 6] is hereby ADOPTED, the application to proceed in forma pauperis [DE 2] is DENIED WITHOUT PREJUDICE for failure to prosecute, and the Complaint [DE 1-2] is DISMISSED WITHOUT PREJUDICE for failure to prosecute. *See Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989) (affirming dismissal of pro se litigant’s complaint for failure to comply with court order).

SO ORDERED this 13th day of October, 2023.

A handwritten signature in blue ink that reads "Richard E Myers II". The signature is written in a cursive style with a large initial "R".

RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE